Filed 4/16/19 Aaronson v. Heshmati CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ARTHUR AARONSON et al., Plaintiffs and Respondents, v. NADIA HESHMATI, Defendant and Appellant.	B283984 (Los Angeles County Super. Ct. No. SC126246)

APPEAL from an order of the Superior Court of Los Angeles County. Craig D. Karlan, Judge. Affirmed.

Nadia Heshmati, in pro. per., for Defendant and Appellant.

Aaronson & Aaronson, Arthur Aaronson for Plaintiffs and Respondents.

Defendant Nadia Heshmati appeals from an order denying her special motion to strike (Code Civ. Proc., § 425.16)[1] a complaint filed by her neighbors, Cynthia Roman Aaronson and Arthur Aaronson (the Aaronsons). Heshmati did not include in the record on appeal a copy of the operative complaint, which is necessary for us to perform our review of the trial court's order. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The superior court's case summary indicates the Aaronsons brought this action against Heshmati in August 2016. On December 15, 2016, Heshmati filed a special motion to strike portions of the operative first amended complaint pursuant to the anti-SLAPP statute (§ 425.16). In particular, Heshmati sought to strike the Aaronsons' claims for defamation, intentional and negligent infliction of emotional distress, and malicious prosecution.

According to Heshmati's declaration filed in support of the motion, in 2014, she noticed that "plants, trees and ivy on the side of [her] Property were illegally removed without [her] authority and consent." Heshmati suspected the Aaronsons were responsible and sent them multiple letters and e-mails demanding they "cease and desist" such conduct. The correspondence also accused the Aaronsons of, among other things, physically attacking and threatening Heshmati, training security cameras into her bedrooms "like sick perverts," and committing insurance fraud. Heshmati apparently sent copies of the letters and e-mails to various other individuals and

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[1] All future unspecified statutory references are to the Code of Civil Procedure.

organizations, including the police department, fire department, "CA Bar Association," and district attorney's office.

Heshmati declared that when she subsequently learned Cynthia Aaronson would be appointed as the head of the membership committee of the Bel Air Hills Association (BAHA), she sent two e-mails to BAHA objecting to the appointment. Heshmati's objections included the assertion that Cynthia Aaronson is "heavily sedated with Vicodin and Oxycodone," and "calls all the well educated and affluent Persians living up and down the Roscomare road 'dirty disgusting Arabs.' " Heshmati further wrote that Arthur Aaronson "conducts fraudulent insurance claims," is "extremely violent," and "has tried to attack me anytime we tried to speak with him about the cutting down of the trees illegally and vandalizing our property."

The Aaronsons opposed the anti-SLAPP motion, arguing Heshmati's conduct underlying their defamation and emotional distress claims was not protected and, even if it was, they are likely to prevail on the merits.[2] The Aaronsons attached numerous documents to their opposition, including several social media posts purportedly written by Heshmati in which she accused her "neighbors" of "watching [her] 24/7 with their cameras pointing into [her] back yard which is against CA peeping Tom statu[t]e!"

The court denied the motion to strike. Heshmati timely appealed.

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[2] The same day the Aaronsons filed their opposition, they filed a request to dismiss their malicious prosecution claim without prejudice.

DISCUSSION

Heshmati contends the trial court erred in denying her anti-SLAPP motion because the challenged claims arise from protected activity and the Aaronsons are not likely to prevail on the merits. The Aaronsons urge us to affirm the order given Heshmati failed to include a copy of the operative complaint in the record on appeal. We agree with the Aaronsons that Heshmati has provided an inadequate record and we must therefore affirm.

Appellate review begins with the principle that " '[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden on appeal to produce a record overcoming the presumption of validity of the judgment or order. (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.) " 'Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' " (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–188; *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.)

We review the denial of an anti-SLAPP motion de novo. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.) The anti-SLAPP statute establishes a two-step procedure to determine whether a claim should be stricken. "At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for

relief supported by them. . . . If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) The court considers the pleadings to determine whether claims arise from protected activity. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 672 ["the issues in an anti-SLAPP motion are framed by the pleadings"].)

The operative complaint in this case is not included in the record. Without it, we cannot perform either step of the anti-SLAPP analysis. We must know the precise allegations that support the Aaronsons' claims in order to independently determine whether they arise from protected activity and whether the Aaronsons have shown a probability of prevailing. Although we can partially glean the nature of the relevant claims from the original motion, opposition, and supporting evidence, they are no substitute for the complaint itself.[3] Heshmati's failure to provide an adequate record requires that we affirm the trial court's order. (See *Niederer v. Ferreira* (1987) 189 Cal.App.3d 1485, 1509 [affirming judgment where appellant

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[3] Heshmati attached several documents to her motion that she apparently believes underlie the challenged claims. Those documents, however, contain numerous statements that are potentially defamatory, and it is not clear which ones, if any, give rise to the Aaronsons' claims. Complicating matters further, the Aaronsons attached to their opposition additional documents containing statements that could also conceivably give rise to defamation claims.

failed to include in the record the relevant cross-complaint and answer].)

Heshmati does not deny that she failed to designate the operative complaint for inclusion in the record. Instead, as we understand her arguments, she contends the record was sufficient because she called the Court of Appeal and was told the complaint and other pleadings were in the court's possession;[4] this was "confirmed" by a company who assisted her in filing the appeal; and she never received a notice from the superior court asking her to provide documents necessary for preparation of the record or to correct any problems.[5]

These arguments are unavailing. The notice of designation, which is part of the record on appeal, did not include the complaint in this matter. Neither the superior court clerk nor the clerk of the Court of Appeal is required to review a record to determine whether it is sufficient to show error. That burden rests with the appellant alone.

Moreover, the respondents' brief put Heshmati on notice that the complaint was not included in the record on appeal. The Aaronsons further argued that the absence of the complaint is a basis for this court to affirm the trial court's order.

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[4] We are not aware of this court making any such representations.

[5] It appears Heshmati's argument is premised on rule 8.140 of the California Rules of Court, which provides that "if a party fails to timely do an act required to procure the record, the superior court clerk must promptly notify the party in writing that it must do the act specified in the notice within 15 days after the notice is sent . . . ." (Cal. Rules of Court, rule 8.140(a).) Here, however, Heshmati took all steps necessary to procure the record; her failure was that she procured an inadequate record.

Heshmati responded to this argument in her reply brief but did not at that time seek to augment the record to include any missing documents. (See Cal. Rules of Court, rule 8.155(a) [a party may file a motion to augment the record to include any document filed in the case in superior court.]) Heshmati has demonstrated she is familiar with court rules as she has cited them repeatedly in her appellate briefing. Her failure to timely provide an adequate record, even after receiving notice of the record's deficiency, is unexplained and without any legitimate justification.[6] (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 [resolving claim against appellants where they "should have augmented the record with a settled statement of the proceeding"].)

Heshmati contends this court should overlook "minor deficiencies in her appeal" because she is self-represented.[7] Yet, self-represented litigants are held to the same standards as attorneys. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 ["[p]ro. per. litigants are held to the same standards as

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[6] On March 14, 2019, we provided the parties a tentative opinion indicating our intention to affirm the trial court's order based on Heshmati's failure to provide an adequate record. Shortly thereafter, Heshmati filed two motions to augment the record to include numerous documents, including the operative complaint. She did not explain, however, why she did not move to augment the record after receiving the Aaronsons' respondents' brief, which was filed on November 16, 2018. We denied both motions to augment as untimely. (See Ct. App., Second Dist., Local Rules of Ct., rule 2(b), Augmentation of record.)

[7] We note it appears Heshmati was represented by counsel when she filed the designation of record on appeal.

attorneys"]; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247 ["pro. per. litigants must follow correct rules of procedure"].) Further, the omission of the operative complaint from the record is not a "minor deficiency." The pleading is required for adequate appellate review. Heshmati was made aware the complaint was not included in the record, yet she did not timely file a motion to augment. Her failure to provide an adequate record is fatal to her appeal.

DISPOSITION

The order is affirmed. Respondents shall recover their costs on appeal.[8]

ADAMS, J.*

We concur:

GRIMES, Acting P. J. WILEY, J.

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[8] The Aaronsons requested in their respondents' brief that we sanction Heshmati for filing a frivolous appeal. They did not file a separate motion for sanctions or provide a declaration supporting the amount of monetary sanctions sought, as required under rule 8.276 of the California Rules of Court. We therefore deny their request. (*Kajima Engineering and Construction, Inc. v. Pacific Bell* (2002) 103 Cal.App.4th 1397, 1402.)

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.